

# Course Companion for BTEC Nationals Applied Law

Unit 1: Dispute Solving in Civil Law

2<sup>nd</sup> Edition



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# Course Companion for BTEC Nationals Applied Law: Unit 1

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# Teacher's Introduction

This resource covers the entirety of the specification for **Unit 1: Dispute Solving in Civil Law** for the Pearson BTEC Level 3 National Extended Certificate in Applied Law for first teaching from 2017.

Each section includes key term definitions and student-friendly notes to support independent study and allow students to discover the law themselves. Varied activities are included throughout for students to engage with and

#### Remember!

Always check the exam board website for new information, including changes to the specification and sample assessment material.

embed learning. These include activities in which students are asked to research cases and Acts to encourage them to take charge of their own learning. Other activities require students to evaluate areas of the law, which is a key skill students must possess for the highest of grades in the exam. Being a higher-order skill, this can often be difficult for students to master with confidence.

There are also practice questions for students to apply their knowledge to scenario questions, which is key for exam success. Indicative content, including model answers and point-by-point plans, are provided for these questions to support teachers, as well as students for extra guidance and self-marking.

Although all topics require application and analysis, there is also emphasis throughout on evaluation as being a higher order skill this is something that students often struggle to get to grips with. There is reference throughout to the assessment objectives so that students can ensure they are working towards what will be examined.

December 2023

#### 2<sup>nd</sup> Edition, December 2023:

Corrections and improvements have been applied, which include additions and deletions to content throughout the resource.

# Student's Introduction

This resource covers the entirety of what could appear on the exam for Unit 1: D are various activities for you to complete, such as researching cases, and it is im so that you gain complete knowledge of the specification. There are also practic applying the law you have learnt to scenario-based problem as this is what you There are also model answers and point-by-point is the indicative content.

#### Top Tips for the Exam

The exam will be 1.5 hour was marked will be two questions, worth 30 marks each

- A file ng aw of negligence (duty of care, breach of duty and ags to ensure you are covering all elements of the test of neg conclus throughout to ensure that you are showing that each test has
- A letter to a client advising on a number of issues highlighted in the questio damages, the civil court system and sources of advice and funding. Top tip multiple elements to address in your answer; use subheadings or different addressing all of these elements.

Remember, you can take two sides of brief notes on A4 paper into the exam.

When marking, examiners will be awarding AO1 marks, where you state what the applying the law to the scenario. AO3 marks will be credited for analysis, and AO evaluative content and justifying conclusions drawn to receive maximum marks, of the question in their answer. Top tip - the highest grades go to those studen in their answer, so remember to do this!

#### Assessment focus:

***************************************				
	Selection and understanding af	r 🤙 eed to ensure that you understa		
A01	legal principles relevated	They are statutes or case law, and be		
	context	relevant to the question asked.		
-	Ap, to of legal principles and search to information provided	Application of the law to the scenario in		
AO2		to provide a resolution to the issue pos		
MUZ		key words or phrases on the question p		
		answer to ensure that you are applying		
AO3	Analysis of legal authorities, principles and concepts	Only by truly analysing the law and w		
		question are you going to be able to a		
		that the correct answer is given.		
	Evaluation and justifications for decisions	You have to provide a reasoned concl		
AO4		question has breached their duty of c		
		to evaluate the law.		
	Presentation and structure	You need to ensure that all elements		
		Remember, there will be two differen		
		must be addressed		

#### Accoccment Content

*********			***********		
Ass	essm	ent Content			
A	Civil	Dispute Resolution	C	How	Prece
	A1	Features of civil		C1	Prec
	A2	Structure diction of the English civil courts	D	Appl	ication
	A3	tivುತ್ತಿ to the courts in civil dispute resolution		D1	Duty
	A4	L kills		D2	Brea
В	Enfo	rcement of Civil Law		D3	Dam
	B1	Sources of advice		D4	Dam
	<i>B2</i>	Sources of funding		D5	Bura
	ВЗ	The cost of taking legal action			



# A: Civil Dispute Resolution

# At: Features of civil law

**balance of probabilities:** based on the evidence A Su A ar court, the occurrent more likely than not

burden of proof: this is on the daming the party bringing the claim, to prove the probabilities their case to be a second to b

civil law fi

co housses many aspects, including disputes between businesses.
Imployees, and individuals

#### **Notes**

**AOI** Civil law can be traced back to the Romans and deals with disputes between or businesses. It is different from **criminal law** in many ways; people will not be a may have to pay compensation and, therefore, it can still be very damaging.

- 1. AD What is the difference between civil and criminal law?
- 2. ADI Can you find any examples of civil and criminal cases in the media? Do

The aim of civil law is to resolve disputes. eraparties.

The party who is making in the party who is maki

They have to vove their case on the balance of probabilities, meaning that the based on the evidence, the incident is more likely to have occurred than not.

3. AOE This is a lesser standard of proof than in criminal cases. Why do you this



# A2: Structure and jurisdiction of the En

appellate courts: courts which hear appeals

courts of first instance: courts which initially hear cases

tracks: depending on the amount of compensation when being claimed, cases a allocated to different tracks

#### Notes

AO1 There is surpor of civil courts which hear different cases, depending or compensationing claimed, the subject matter of the case being heard or whe come to court or if it is an appeal of a previous decision.

In the civil courts, cases are also assigned to a track as set out below:

#### AO1 Small claims track AO1 Fast track For claims valued under For claims valued between £10,000 or £1,000 for £10,000-£25,000 or personal personal injury claims injury claims between £1,000 to £25,000 The judge takes an active (inquisitorial) approach in the There is a very strict timetable proceedings set by the court The parties are encouraged to Hearings are limited to one day The aim is to cases within represent themselves Cases are heard by a District 30.w æk 🛴 Judge in a county court es valued up to £25,000 are heard by a Circuit Judge in a county court



- 1. AOI There is a hierarchy in the civil courts. Research this structure to create a
  - Civil courts of first instance
  - Civil courts of appeal
  - Reasons for appeal
  - How to appeal
  - Permissions to appeal, if needed
- 2. A01 What is the role of judges in civil cases?





# A3: Alternatives to the courts in civil disp

arbitration: where the disputing parties agree to use an arbitrator to settle their third party who will hear from both sides and make a binding decision on the mo

conciliation: where a third party gives advice and miss an grventions so as to s dispute

mediation: where a dispute is refalled to alphird party who acts as a go-between try to find a solution accepting to them.

negotiation erally stries work themselves to try to resolve their dispute ombudsm. Official body which investigates complaints

#### Notes

**ACL** Going to court is one way to try to resolve a matter, but there are alternational advantageous as they can be quicker, less costly, or more informal to help keep is a family dispute). These also have their disadvantages as most are not enforce guarantee to ensure that any decisions made will be adhered to. Below are noted dispute resolutions (ADR), together with their advantages and disadvantages.

#### APDI Arbitration

Arbitration is where a dispute is referred to an independent third party (an arbitration which is enforceable at the courts. The arbitration is conducted from the second which may involve witnesses, to the arbitration is conducted from the second which may involve witnesses, to the arbitration is conducted from the second which may involve witnesses, to the arbitration is conducted from the second which may involve witnesses, to the arbitration is conducted from the second which may involve witnesses.

This is widely used in best figs with some commercial contracts even searbitrated in the search is a plangreement within their duration.

AO3 Advantages		/A(a):
Arbitrators can bring much expertise	*	There can be inco
Private	88	Professional arbite
Decisions are enforceable at the courts	80	There are limited
Informal	*	Arbitration is not
Can be faster than court		
Can be arranged to suit the parties themselves,		
e.g. timing, location		
Can be cheaper than court		
Frees up courts		





## Conciliation

In conciliation, an independent third party is used as with arbitration, but here t intervening and giving advice to try to find a solution upon which they all agree. advisors, but the conciliator will also intervene between them and put forward s dispute. This is used a lot in employment law matters. If an agreement is reached enforceable; however, if no agreement is reached, the matter will have to be ref

#### **Advantages**

- Conciliators bring expertise and advice to all parties
- Private
- Chear
- Can be èr than court
- Informal
- Can be arranged at a time and location convenient to the parties
- Imbalance of pow represented and t be better at puttir the other
- May ultimately en is reached

#### Mediation

Mediation is where an independent third party acts as go-between between the them in resolving the problem. The parties do not have to meet face to face, and all communications, including any offers to find a resolution. The parties can have The mediator is not there to advise the parties, with the focus rather being on e their own solution. They obviously know the problem the best and are in the best resolution, and in some instances can remain on good terms in the future, which situations (family disputes, for example). The Family Law Act 1996 encourages all mediation as a way to resolve their problems initially hof we jursuing formal legal costs and time for all parties, including the court.

#### AOE Fast Imbalance of pow Cheap Media in be trained specialists in the area and bring a lot of expertise to the negotiations the other

- Can be arranged to suit the parties themselves, e.g. timing, location
- Informal
- Empowers the parties to make their own decisions, meaning good relations can be fostered for the future, which may be applicable in certain instances (e.g. family disputes)
- represented and to be better at putting
- Unenforceable
- May ultimately en is reached





## Negotiation

This is the most informal type of ADR, with the parties discussing the problem ther legal representation, in an attempt to find a resolution to their situation. There is not the parties setting the agenda and leading the negotiations. This can be advantaged those between neighbours, rather than pursuing costly court actions. Legal adviso would even suggest this way forward for many matters in an attempt to resolve the can be resolved like this, even as late as the morning of the solution o

	<b>(*•</b> . ' aages		7.(0)
49	Fast 🚺 💮	*	Imbalance of pow
*	Cheap		represented and t
*	Informal		be better at puttir
*	Private		the other
*	Can be arranged to suit the parties themselves,	*	Unenforceable
	e.g. timing, location	*	May ultimately en
8	Empowers the parties to make their own		is reached
	decisions, meaning good relations can be fostered		
	for the future, which may be applicable in certain		
	instances (e.g. family disputes)		000000000000000000000000000000000000000

#### **Ombudsman**

I. A01 Research the function of ombudsmen (what matters they look into, their princeled, as well as their advantages and disadvants







# A4: Legal skills

**legislation:** laws which have been passed by Parliament in Acts or through other delegated means

plagiarise: to copy the work of another and pass it off an in own

#### Notes

AO1 You would have a variety of legal skills if working in a law office or conductions clients, we witer-office communications to other legal staff or speak at excellent with and spoken communication skills.

There are many sources which you will be looking at in your studies; these may be legal cases, commentaries on legal cases, **legislation**, articles in journals or newspapers, opinion pieces, blog entries, statistics, websites, textbooks or lesson handouts.

If you need to look for cases, these can be found here: <a href="https://www.bailii.org/">https://www.bailii.org/</a> All legislation can be found here: <a href="http://www.legislation.gov.uk/">http://www.legislation.gov.uk/</a>

It doesn't matter how much you find in your research; if you don't know how to be organised and know what you are looking for; be precise! Also keep notes of bibliography in case you need to look at them again. You also need to ensure you you understand them and don't just copy and paste from them. You need to be your reading and research in your own words so that you is plagiarise.

- 1. A03 What legal skills do you think a second tank
- 2. A03 Where would a seconformation on the law?
- 3. AO3 V by you think you would have to bear in mind to communicate effectively

# A: <u>AOI 2年代</u> Civil Dispute Resolution Prac

You are on work experience in a high-street firm of solicitors and have a client, Miss Jones, who has come into the office after she slipped at a and there was a leaking tap and she did not notice a puddle of water customer to have her hair washed at the sinks. She fell over and has be she cannot work for a month and will need physiotherapy. She cannot take taxis everywhere. She is angry that her employer, Chic Salons, die they knew about the leaking tap and now she hair returning to wo she is concerned about the sales of taxis and physiotherapy, estimants to know whether there any a problem of the sales of did go to court, she wants to know what this wo

Write a letter of Miss Jones addressing the following:

- What standards her case needs to be proven against in court
- Explaining the track system and which track Miss Jones' claim would legal action against her employer
- Whether any alternative forms of dispute resolution could be applical



# B: Enforcement of Civil Lo

# B1: Sources of advice

advocacy: speaking on someone's behalf at court and in freezenting their matter barristers: working in chambers, they true clients in court, arguing their case.

Citizens Advice: network of the spendent advice

Law Centre fe survice, casework and representation to individuals or a solicitors:

#### Notes

AO1 There are multiple sources of legal advice which someone with a legal issue assistance. All have their advantages and disadvantages, come at varying costs a

#### Solicitors

Working in many different areas of the law, solicitors provide advice and as represent them in County Court hearings, unless they have become a Solicit

#### Barristers

Highly skilled at advocacy, they are engaged and briefed by solicitors on a calcourt, arguing their case on their behalf. Barriets and areas of the law.

#### Citizens Advice

With characteristics bleam with the legal advice and assistance on a range

## • Law Ce

Set up in the 1970s, these have provided free legal advice and assistance to as educating them on legal issues and lobbying the government on certain is community. They focus on mainly social justice issues.

#### Insurance companies

Many insurance policies include legal protection which will provide the policies some selected issues.

#### The Internet

Often consulted very early on in legal proceedings by people to get some in a claim or where they can get further information, this can provide a wealth reliability of this must be checked.

- 1. A01 Make notes on the control of and disadvantages of the different sour
  - **e** S
  - Bo
  - Citizens Advice
  - Law Centres
  - Insurance companies
  - The Internet



# **B2: Sources of funding**

**after the event instance:** this is insurance which is purchased after a legal disputable of the event insurance: this is insurance which is taken out before any prospection. Car insurance is taken out annually before any issues and but can then be conditional fees: the way of funding a legal care of any bown as 'no win, no feet probono: from the Latin meaning 'for the complete giving back to society

success feet of the second of the successful of

#### Notes

#### Private payment

- This is where you use your own money to pay for any legal advice (from a see example). This is the most common way to pay for a will to be created or for buying or selling a house, known as conveyancing.
- Most legal work is charged at an hourly rate plus expenses, known as disbuted amounts, e.g. £150 for writing a will, can also be quoted.
- Hourly rates will depend on the experience of the solicitor.
- Dealing with someone's finances on death, known as probate, is charged by known as an uplift: this is calculated on the value of the deceased person's more money the deceased person owned, the more payable.

#### Act insurance

- Some car insurance and have left consurance policies provide cover for legal
- There are two ty அட்டி ந்துள்ளம் policy which may pay for legal expenses: be event:
  - Be event is taken out usually with an annual premium paid in a for possible legal problems; this applies to car and house insurance and often.
  - After the event insurance is taken out after the incident has occurred a
    insuring once the matter responsible for the legal action has occurred.

#### Government funding (civil cases)

- Whether legal advice and representation will be paid for by the governmentage of case and the financial circumstances of those involved.
- The financial circumstances of those bringing the case, including potentially
  will be analysed to determine whether they will get funding for this from the
  and all other forms of income will need to be disclosed.
- Cases involving mental health tribunals or childre in any and child abduct qualify for funding from the government, et archive of the financial circums
- Even if funding is provided, this with a full amount of the legal cost required or the Legal Aid and not have put a charge over any property or most any government with a unised to fund such a case.

# Δ021 Condi

Often seen in advertisements, these are commonly known as 'no win, no fell contingency fees). These are funding arrangements between a client and the they agree to act on a 'no win, no fee' basis. If they are successful at court, fee can be charged on top of what the legal advisor would normally charge.



- This type of funding was first permitted under the Courts and Legal Services reduce the cost of legal funding by the state. Government assistance for sor 2000, meaning for those struggling to fund their own legal actions, this is the
- This is not simply 'no win, no fee' as if the solicitor wins the case, they will a
  their normal hourly rate. This success fee can be up to double of what they
  type of work, limited to 25% of the final amount awarded at court.
- The losing party may be ordered to pay some of the femal hough costs are all
- Insurance can be taken out to cover these st ເກຣ. າປະເວຍຫຼືກ this in itself can b

Conditional fees are highly contactions വര്ട്ട് വര്ട് വര്ട്

	Advantages		<b>∆(€E</b> Disad
•	No cost to the government	8	Solicitors will take only cases
	Provide access to justice to all		this can discourage some 'tes
*	Discourage weak cases, as a solicitor		Insurance premiums, to cove
	will not take on a case if they are not	*	There may be a conflict of int
	likely to win and thus be paid		client, as the solicitor may wa
			rather than keep fighting for
		*	The fees are confusing and ne

#### 101 Trade union membership

Some people who join a trade union at work will receive free legal advice as

#### Citizens Advice

• This is free advice from legally unqualified staff, by an offer a wealth

## A Pro bono

- Literally meaning 'for t' രാത്രിന്റ് രാദ് sis time given by a legally qualified pers
- Law firms will single a pro bono commitment in order to fulfil their CSR policy.
   h which they give back to society.
- Some low ms work with law students at various universities offering free

# 





# B3: The cost of taking legal a

award of costs: decision made by the court as to who is going to pay the bill for usually, this will be the losing party paying costs for the winning party and thems

court costs: courts will charge a fee for their use

legal representation costs: the costs of those doi g 1 ് കൂal work and presenting

#### **Notes**

AOI Costs ways at the discretion of the court. Generally, the losing party warde against them to pay the full legal costs consisting of both court costs and legal the winning party (which can be substantial) so that the winning party is not dismatter to court. There are also other costs associated with going to court, such a business, which may impact its customer numbers and put its employees' jobs as

- 1. AOE Mindmap the cost of taking legal action.
- 2. A03 Consider whether the cost would deter someone from taking action.

# B: AOI, 2名3 Enforcement of ない月 Law Practi

You are on work who has come into the office after she slipp hair and there was a leaking tap and she did not notice a pud was taking a customer to have her hair washed at the sinks. She fell leg, meaning she cannot work for a month and will need physiother and is having to take taxis everywhere. She is angry that her employ take precautions as they knew about the leaking tap and now she is for them for seven years and wants to remain on good terms with the soon as she can, but she is concerned about the extra costs of taxis are estimated to be £400. She wants some legal advice on her options, by look for help. She is worried about how she would pay for legal advices to court, as she has no savings to pay for this.

Write a letter to Miss Jones addressing the following

- Where she could gain advice for her case.
- How she could fund her case
- The cost implications and inglass her case







# C: How Precedent Work

# C1: Precedent

distinguishing: where a judge can avoid following constant before the sufficiently different material facts for a coher

obiter dicta: from the Latin meaning 6.1 for yords said', these are not binding but subsequent cases

precedent of a legal judgment which must be followed in all subsequent ratio decidendi: from the Latin meaning 'reason for the decision', this is the binding

**reversing:** where on appeal a court higher in the legal hierarchy overturns the disame case

stare decisis: from the Latin meaning 'to stand by the decision', meaning that whe same facts, previous decisions of higher courts should be followed

#### Notes

AGI Judicial precedent is the process whereby judges follow previously decided issues are sufficiently similar.

The doctrine of judicial **precedent** is known by through in a **fre decisis**, which liter decision. When deciding a case, the judician allow at a previous case and its relatin, literally meaning 'reason from a form a form. The ratio decidendi is the legal portion of law which has to be from a similar binding on all lower courts. The other thin **obiter dicto** and these are not persuasive instances.

- 1. A01 Research the ratio decidendi in the case of Donoghue v Stevenson.
- 2. A01 Research the obiter dicta in the case of Bolton v Stone.

Sometimes it might not be appropriate to follow precedent, and it can be avoide

## **COL** Distinguishing

Although the facts of a case may appear similar to those of a previous case with may consider that there is some material difference between the two cases and them, so that the first binding precedent does not to be ollowed. This hap of *Balfour* and *Merritt*.

In the 1919 case of *Balfors*, a husband and wife made a verbal agreement returned to the make a monthly payment to the wife, who remained dispute bether her pair and the husband refused to make the payments. When decided that was merely a domestic arrangement rather than a legal one, and make any award.



A similar set of facts was seen in the 1971 case of *Merrit v Merrit*, where the coufinancial arrangement between spouses. This involved an arrangement between payment for a house which had not been fulfilled. This later case was distinguish *Balfour*, however, as in this case the couple were separated when making the ag seen that legal relations were intended and the court intervened to enforce it.

## **ACL** Overruling

One court may decide that the ratio decider is existent another court is wrong in lacase is brought before them they will be overrule the previous case, settle and state a new preceder. It will be will be will be a subject of the previous decisions are still binding in those cases.

## Reversing

3. AO1 Research what is meant by 'reversing' and find a case example of this.

# C: <u>A이 2 원당</u> How Precedent Works Practice

Dono v Steveo, 3 January 2020 (NB this is a fictional case for the purposes of this queed to apply in this question)

Dono's brother purchased a packet of Steven of plant for him from a neating half the packet Dono found a deam stand slug in the pack. Stomach pains for Dono and the control claim to court against Steven stated that food many business such as Steven owe a duty of care to (Dono in this see

Your Anna, has come to see you seeking advice after she suffer preventing her from going to work as a nurse for a week, after she as which she found contained remains of a beetle.

Write a letter to Anna addressing the following:

- How precedent works
- What existing well-established precedent would be followed in this call
- The likelihood of success for Anna's claim





# D: Application of the Law of Ne

**tort:** from the French meaning 'wrong', this is where someone has suffered a civil which has interfered with a protected interest

#### Notes

AO1 The idea of the law of the law of sased in civil law, where there has been an interpretate the someone's and the law of sased in civil law, where there has been an interpretation of the law of t

#### Donoghue v Stevenson

Mrs Donoghue went into a café with her friend, who purchased for her a bottle of glass bottle so the contents were not visible. After drinking some of the ginger better the rest of it out and found that it contained a decomposing snail. She then because of this drink.

The court held that Mrs Donoghue had not purchased the drink herself – her frie could not bring a legal action for breach of contract for a consumable beverage with Mrs Donoghue had not entered into any contract; rather, her friend had. However Donoghue was still able to claim for breach of duty of care, as it would be expected beverage it will not contain anything to make you ill. This case first sets down the

Lord Atkin stated, 'You must take reasonable pre suit to avoid acts or omissis foresee would be likely to injure your segrence.'

- 1. AOI ( ) another quote from the case on who is one's neighbour?
- AOS Think of how far the law has developed on negligence and list five possinegligence could arise.
- 3. Some argue that negligence has become big business and we are an 'all think this is justified? Is it so bad?





# D1: Duty of care

duty of care: legal obligation to others to ensure they are not harmed reasonable foreseeability: whether the reasonable person should have foreseen from their actions

#### **Notes**

AO1 For negligible (1) Swin, there must be a duty of care owed to the injuremust have reached and the breach must cause reasonably foreseeable de Atkin, in DoN Sude v Stevenson, looked at how a duty of care is established through the test for establishing a duty of care was seen in the case of Robinson v Chief Communications.

- 1. AO1 Research what happened in the case of Robinson v Chief Constable of W
- 1. A duty of care may firstly be established through existing statutes or precedence of the will be a duty of care in cases involving road traffic incidents between such as cyclists or pedestrians, as there is established precedent in Nettlesh users owe a duty of care to others. Likewise, Walker v Northumberland Cours is a duty of care owed from an employer to an employee, Whitehouse v Jord duty of care owed from a doctor to their patients, Donoghue v Stevenson estate owed from manufacturers to consumers.
- 2. AO1 Research and find a sase where a duty of care is seen between the
  - Police\_and t' ຈ , ່າ ຮັ
  - Transport at students
  - Levis visers and their clients
- 2. In **novel situations**, which have not been seen by the courts before, the law





# D2: Breach of duty

breach of duty: where a person has fallen below the objective standard of care

prudence: cautiousness

reasonable man: the objective standard

risk factor: something that increases the characteristic something injured

Notes

AOI If there duty of care, it then has to be determined whether there has be The law does not expect us to be perfect, but it does expect us to act reasonably the standard of the **reasonable man** in the same circumstances, as set out in Bly

1. AO1 Research what happened in the case of Blyth v Birmingham Waterworks

People will judged against the standard of a **reasonably competent person**, so if be judged against the standard of a professional tradesperson, but you must ensuand you will be judged against the standard of the reasonably competent personably competent person

2. A01 Research what happened in the case of Wells v Cooper.

Those with **special skills** are expected to accomplete accomplete person with those skills expected to act as a reasonable person with the case of act as a reasonable person with the case of act as a reasonable person with the case of act as a reasonable person with the case of act and act as a reasonable person with the case of act a

However, what of **trainees**? Trainees are to be judged against the standards of a There are no concessions made for trainees, apprentices, learners, etc.

3. A01 Research what happened in the case of Nettleship v Weston.

However, if the reasonable man, even one with special skill, would not know that fact dangerous, then the duty of care owed to the claimant will not be breached not be expected to know of a manufacturing fault with a local their welding tools tool is used for too long. Fundamentally, one can or local against unknown risk

4. AOI Research what ham a din ) a case of Roe v Minister of Health.

A child, in tige of Orchard v Lee, was seen to have to act as a reasonable chil

5. AO1 Research what happened in the case of Orchard v Lee.

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## Risk Factors

There are certain risk factors which the courts consider as to whether they have care expected of a defendant and whether they have fallen below the standard duty of care to the claimant was breached.

- a. Probability of harm the greater and more likely the risk of harm, the more
  - 6. AGI Research what happened of a selection v Stone.
- b. Seriou of the reasonable man needs to take more care when to the archaracteristics of the claimant.
  - 7. A01 Research what happened in the case of Paris v Stepney Borough Co
- c. Practicality of taking precautions the courts will consider the cost and effection eliminate the risk. If these are too high for the likely damage to be caused, to be imposed, e.g. closing a whole school because of a power cut in the main.
  - 8. AQ Research what happened in the case of Latimer v AEC.
  - 9. AO4 Do you think that big businesses may be scared and take precaution doing so? Can you find any contemporary a parameter of this in the media?
- d. Social utility if the actic and the perendant have a wider value to society not be held liable.
  - 10. A62 Research what happened in the case of Watt v Herefordshire Coun





# D3: Damage

factual causation: that the damage suffered by the claimant was actually cause defendant – the legal test for this is the 'but for' test: but for the actions of the decare, the damage to the claimant would not have occurred

thin skull rule: the idea that you take your victim, , , , o , ina them

#### Notes

AO1 Once to you care and breach of duty tests have been satisfied, it must be damage the semant suffered was caused by the breach of the defendant.

**Factual causation** – the defendant must have actually caused the damage to the party, for example. To determine this, the **'but for' test** is used – this is where it defendant breaching their duty of care, the damage to the claimant would not have

1. AO1 Apply the 'but for' test to the case of Barnett v Chelsea & Kensington Ho

**Legal causation** – the defendant must have caused the claimant's loss or injury be they owed. Intervening acts, such as acts of a third party, may break the chain of unforeseeable; however, as long as some damage is foreseeable, the defendant

- 2. A611 What is meant by the 'thin shall
- 3. AOI Research who has a in the case of Smith v Leech Brain.

Foreseeability of damage - the resulting damage cannot be too remote.

- 4. AOI Was what happened in the case of The Wagon Mound too remote?
- 5. A01 Contrast this with the case of Hughes v Lord Advocate.



# D4: Damages

**contributory negligence:** this is a partial defence raised by the defendant where claimant's claim is reduced because they have contributed to their own injuries the e.g. by not wearing a seatbelt in a car

general damages: all losses which are not capat' (see Sct quantification mitigation of loss: where an injured now, nor aken action post incident to respecial damages: losses with the first production of the trial structured may syment of damages in instalments

volenti no uria (consent): a full defence where a claimant knowingly conse placing themselves in a situation where harm may arise, e.g. by getting into a car

## Notes

What the claimant will be trying to achieve in these negligence cases is dammoney which is meant to put the person back in the position they were in before There are two 'heads' (types) of damages: general damages and special damages.

- A. General damages this covers all losses which cannot be exactly calculated amenity (e.g. being unable to pursue certain hobbies).
- B. Special damages these are damages which can be exactly calculated and fee.g. receipts up to the date of the trial, and include:
  - I. Loss of earnings
  - II. Damage to property or possession
  - III. Medical expenses
  - IV. Expenses to company admittes, e.g. adaptations to living accommod (states, presented and presented accommod states).

These a ther broken down into pecuniary and non-pecuniary.

- Pecuniary losses are for financial losses; these could be pre-trial or for loss of earnings.
- II. Non-pecuniary losses are for things such as loss of amenity, e.g. inabilist or tennis or golf club memberships, pain and suffering, and for the injustin court by using specific guidelines.

Damages can be paid via a range of methods, including **structured settlements**, a lump sum, damages can be paid in small, regular amounts.

In an award of damages one must be aware of **mitigation of losses**, as every claim to mitigate or reduce their own losses. If not, then their award of damages may high-specification sports car to replace a small car would failure to mitigate been inflated, and thus an award of damages may be exceed to reflect this.

There can also be defences which was specified on damages. These are **contributo injuria** (**consent**):

- Contributing to their injury, e.g. not wearing a seatbelt.
- Volenti non fit injuria (consent) is a full defence where the claimant has condefendant acting negligently. They freely consent to taking that risk, e.g. will helicopter flown by someone who is known to be intoxicated.
- 1. A04 Do you think that the concepts of contributory negligence and volenti are



# D5: Burden of proof and *res ipsa*

res ipsa loquitur: from the Latin meaning 'the thing speaks for itself'. In practical to where, given the facts, the harm could not have occurred unless there had been in

#### Notes

#### Burden of proof

AO1 The buring of the five activity matter is a lesser standard of proof than in crising impact could be away a person's liberty.

#### Res ipsa loquitur

This refers to a situation where, given the facts, the harm could not have on negligence. Where someone has control of an incident, it is seen that, if there is responsibility due to the control they have over the situation. This could be seen where swabs were left inside a person's body after an operation had been carried must be due to the negligence of those conducting the operation as no other extends the thing speaks for itself.

- 1. AO1 Research upon whom the burden of proof is in civil cases, and what this
- 2. A01 Research what the standard of proof is in civil cases, and what this mea
- 3. A01 What does 'res ipsa loquitur' literally me inf

In some situations of nc െ പ്രാഹ് difficult for the claimant to know exactly wh seem obvicate to പ്രാഹർമ്പ് must have been negligent.

4. AOI Research what happened in the case of Scott v London & St. Katherine D

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# D: <mark>△◎1, 2,53,24</mark> Application of the Law of Neg Questions

#### **Question A**

Janie has been involved in a car accident when a immer driver, Joe, roundabout the wrong way. Janie's car, we fee ally imported Japane extensively damaged, with reprint intaced to cost £20,000.

You are a trainee school on Jaw firm and have been asked to prepare a should ince any surwork:

- What I for negligence is (duty of care, breach of duty and dama)
- Apply this to the facts to determine whether Joe has been negligent
- A general evaluation of the law of negligence

#### Question B

Mrs Adams is a trainee teacher who has taken her class on a trip to a knows that one of her students, Luke, has a nut allergy. Despite this, students samples of the chocolate without checking whether the chocolater eating the chocolate, Luke has an allergic reaction and has to see spends two weeks in hospital.

You are a trainee solicitor in a law firm and have solicitor in a

- What the test for negligible is wurf of care, breach of duty and dama
- Apply this to determine whether Mrs Adams has been neg
- A gen al ation of the law of negligence

#### Question C

Mr Carr, the owner of Carr Construction, had erected scaffolding at some works to the roof. There were a number of heavy roof tiles on Mr Carr climbed onto the scaffolding, which had not been secured p scaffolding, along with a number of the roof tiles, went onto the road was employed by Mr Carr as a surveyor on the site, became trapped Mr Carr rushed to free her. In his haste, he did not notice parts of the her ears. Mrs McGuire has very sensitive ears, which was known to asked to provide her with ear defenders on a with loud machiner McGuire was freed, she was taken the material for a check-up. Unfortunusual sensitivity this contact the local parts of the hearing. The hearing I in the Welsh National Parts and Tarries and Tarri

You are a to solicitor in a law firm and have been asked to prepare a Mr Carr, which must cover the following:

- What the test for negligence is (duty of care, breach of duty and dama)
- Apply this to the facts to determine whether Mr Carr has been neglig
- An evaluation on the impact of the law of negligence



# Indicative Content for Practice 🤇

# A: Civil Dispute Resolution Practice Question

This question requires an explanation of the different tracks in the county court: small claims track.

In addition, it requires you to look at ADP is soon to the court and go through the scenario, outlining what each so is volves: procedure, people involved, a

Top tip — the still squires you to provide advice to the client, so you have to sapplicable the client is applicable to the client, so you have the sapplicable to the client, so you have the sapplicable to the client, so you have to sapplicable the client, so you have to sapplicable the client, so you have to sapplicable the client, so you have the sapplicable to the client, so you have to sapplicable the client, so you have to sapplicable the client, so you have the sapplicable to the client t

#### Suggested answer:

Miss Jones Miss Jones's address

Dear Miss Jones,

#### Your recent accident

I am writing to provide you with some helpful advice on your recent acceptable about.

Firstly, the party who is making the can wouself in this incident – will courts as the Claimant, and which are burden of proof, meaning that responsibility of property case, which of course we shall do on your be proved or a strainer of probabilities, meaning that you must show more than not in terms of what happened and the injuries which of

There are different tracks which your case would be assigned to in the con how much is claimed:

- Multi track claims for any claims not covered below
- Fast track claims for claims of up to £25,000 or personal injury up
- Small claims for claims of up to £10,000 or personal injury up to £1
  applicable here

If you do not want to go to court, then you could utilise what is known a resolution (ADR). This can be more advantageous than going to court, a cheaper and less stressful. Possibly the most informal forms of ADR, such negotiation, would be most applicable here. Mediation is where a persolution, would be most applicable here. Mediation is where a persolution are also to try to help in resolving an excellent. The parties to face and a neutral mediator will necessory advisor if they so wish. The mediathe parties, with the factor and are in the best place to find a some instances can remain on good terms in the future essent are some situations (family disputes, for example).

If the parties reach an agreement, then this can be written down and, if become legally binding, although this is not the automatic position as so been met, and the lack of enforceability of anything agreed can be a down



Of course, in some instances mediation may not work; this is another disthet matter may have to go to court anyway.

As well as mediation, there is also the process of negotiation, which make court to solve disputes between parties. This is different from mediation problem themselves, with or without legal representation. This can be for emote – through correspondence such as letter ( xample. Like mediadvantageous for you negotiating directly ( xample) are employer, finding a you both, as I understand that you have turn to work for them.

There can be displaced in the second of the

Yours sincerely,

# B: Enforcement of Civil Law Practice Question

You are asked here to look at sources of advice and funding.

- For sources of advice, you could look at solicitors and barristers, Citizens Adfor free advice. These will all have their pros and cons.
- For funding, you could refer to paying privately, insurance policies, and cone
   explain conditional fees as these are quite complicated!

Top tip – this question requires you to provide advice to the vient, so you have to is applicable to their case and actually offering them, or so ations to their prolonguestion says. Also, for the highest grades the bull of some evaluation.

#### Suggested answer:



Dear Miss Jones,

#### Your recent accident

I am writing to provide you with some helpful advice in relation to how and fund this in relation to the recent accident, which I am sorry to hear

In relation to where you can access advice, many people may look to the advice is plentiful and free, it may not be specific to your case or reliable take care that you are accessing only advice that is a evant to our legal USA, for example. Citizens Advice may be the advice may be not be free, although the availability of the advice may be patched centres, with many distribution and to a lack of government fundition legal advice which advices and barristers would obvious the lack of the lack of government. However, this can be expected with an advice which are adviced. Solicitors and barristers would obvious advices the lack of government funditions are adviced by a solicitor of the lack of government funditions.

There are many different ways to fund your case. You may have housely covers legal costs or may be part of a trade union which does the same, the costs yourself.



There is also something known as conditional fees, also known as 'no was succeeds, the solicitor charges a 'success fee' (up to double of their nor 25% of the total amount awarded at court) on top of the normal hourly soption for you.

It is important to remember that costs are always at the discretion of the losing party generally has to pay the costs of the in ing party, this can therefore, consideration of how costs will see here is essential.

If I can help with anything அடிந்த அரிக்கர் me



# **C: How Precedent Works Practice Question**

For this question, you have to go through each way precedent can be avoided: redistinguishing. You could even add some case examples and apply them to the second

#### Suggested answer:

Anna's address

Dear Anna,

#### Your recent accident

I am sorry to hear of your recoming that. This does appear to have similar would be called a precedent, which judg the must be followed in all subsequent cases due to the leg decisions must be adhered to. Future cases very similar would follow the decision in this case.

Your claim is likely to succeed as the long-established precedent of Done followed, as far as we are aware it has not been reversed.

Yours sincerely,





# D: Application of the Law of Negligence

For each of these questions where you are having to apply the law, remember you of the negligence test:

- 1. Duty of care
- 2. Breach of duty here you could also bring in any relevant risk factors
- 3. Damage

Remember to conclude and also bring in war wation

Top tip — as the questice of some affile note, subheadings are a great way to organ ensure that the relevant parts of the answer and it will ensure and so easy the examiner to mark.

#### **Question A**

#### File Note

It must be determined whether there is a duty of care, breach of this du determine whether negligence has occurred.

#### Duty of care

Following Robinson v Chief Constable of West Yorkshire Police, using Weston it can be determined that there is an existing duty of care v

There is a duty of care owed from Joe to Janie as road

#### 2. Breach of duty

If there is a duty of care, it then best by sound whether this duty law does not expect us to be set, but reasonable, and thus we standard of the set of an arming ham. The best of the set of the set

s i sold as the reasonable person here as they would know bout the wrong way. It does not matter that he is a learner ways have ship v Weston states there is no lesser standard owed from lessers.

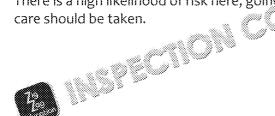
Joe has breached the duty of care owed to Jani

#### **Risk Factors**

There are certain risk factors which the courts consider when deciding was breached.

a. **Probability of harm** – the more likely the risk, the more care needs reasonable man. (*Bolton v Stone*)

There is a high likelihood of risk here, going a did a roundabout the care should be taken.





#### 3. Damage

**Factual causation** – the defendant must have actually caused the dand not some third party, for example. To determine this the **'but f** where it must be satisfied that but for the defendant breaching the damage to the claimant would not have occurred. (*Barnett v Chelse*)

Here, but for the actions of Joe, driving incorrectly, the damage to been caused.

Legal causation – the resulting an about the too remote (The The damage in this case is something and the same about the same and way would cause harm.



Joe has caused damage to Janie.

#### Conclusion

There was a duty of care owed from Joe to Janie; this duty was breached caused by the breach.

#### You Must Bring In Some Evaluation

Can damages ever put somebody back into their original position as in the prospects as a concert planist have potentially been impacted? Are we be learners such as Joe here?

#### Question B

#### File Note

It must be determined whether there is a dut to breach of this du determine whether negligence has cooking down.

#### 1. Duty of care

Followise for John Chief Constable of West Yorkshire Police, using the shire CC v Lewis there is an existing duty of care between

There is a duty of care owed from Mrs Adams to Luke as his teacher.

#### 2. Breach of duty

If there is a duty of care, it then has to be determined whether this. The law does not expect us to be perfect, but to act reasonably, and the standard of the **reasonable man**, as from the *Blyth v Birmingha*.

Mrs Adams has not acted as the reasonable person here. Knowing allergy, she should have checked that the chocolate did not contain him. As per the case of **Nettleship v Weston**, it does not matter that the same standard of care is expected of all.

#### **Risk Factors**

There are certain risk factors which the compactors consider when deciding we fallen below the standard compactors which the compactors consider when deciding we fallen below the standard compactors which the consider when deciding we fallen below the standard compactors which the consider when deciding we fallen below the standard compactors which the compactors which the compactors when deciding we fallen below the standard compactors which the compactors when deciding we fallen below the standard compactors which the compactors when deciding we fallen below the standard compactors which the compactors when deciding we fallen below the standard compactors when deciding we consider when deciding we fallen below the standard compactors when the compactors when the compactors when the compactors when the compactors were considered with the compactors when the compactors when the compactors were considered with the compactors which is compactors when the compactors were

a. The states of the risk – the reasonable man needs to take more considered to the particular characteristics of the claimant. (Paril Council) Here it is known that Luke has a nut allergy; therefore, the from eating nuts.



- b. Probability of harm the greater the risk of harm, the more precate (Bolton v Stone) Luke's allergy is known to the teacher and, therefore have been taken.
- c. Practicality of taking precautions the cost and effort of taking preconsidered. (Latimer v AEC) Precautions could have been taken quit whether the chocolate contained nuts.

Mrs Adams has breached with all y of care owed to l

#### 3. Damage

Factual causation — edificient must have actually caused the diamond of the disparty, for example. To determine this the 'but for the defendant breaching the diamond of the claimant would not have occurred. (Barnett v Chelse Here, but for the actions of Mrs Adams not checking whether the chapter giving it to Luke, he would not have suffered harm necessitations.)

**Legal causation** – the resulting damage cannot be too remote. (*The* The damage in this case is reasonably foreseeable as it is foreseeable someone with a known allergy to nuts without checking whether it would cause harm.

Mrs Adams has caused damage to Luke.

#### Conclusion

There was a duty of care owed from Mrs Adams to Luke, this duty was twere caused by the breach.

#### You Must Bring In Some Evaluation

Is holding trainees to account as full training mainful duals going too far? Sowed a lower standard of a same teacher?

Question



#### File Note

It must be determined whether there is a duty of care, breach of this dudetermine whether negligence has occurred.

#### 1. Duty of care

Following Robinson v Chief Constable of West Yorkshire Police, using Northumberland County Council it can be determined that there is a between employers and employees.

There is a duty of care owed from Mr Carr to Mrs McGuire as Mr Carr Mrs McGuire.

#### 2. Breach of duty

If there is a duty of care, it the miles of determined whether this determined whether the determined whether th

r able professional scaffolding erector. In the case of *Haseldin* person should be judged against the standard of a skilled tradesma

Mr Richards has breached the duty of care owed to Mrs



#### **Risk Factors**

There are certain risk factors which the courts consider when deciding we fallen below the standard of the reasonable man and their duty of care was breached.

a. Seriousness of the risk – The reasonable man needs to take more consists due to the particular characteristics of the laimant (Paris v Stephere was here for Mrs McGuire. For it was a swin to Mr Carr that she ears as he had previously provide the with ear defenders on sites.

The seriousness of a ris was high here as Mrs McGuire had unus therefore A with r should have taken more precaution to protect h

**b.** If willity of harm – The more likely the risk, the more care that necessonable man (Bolton v Stone).

There is a high likelihood of risk as Mr Carr was using scaffolding what adequately by him which would increase the standard of care expe

#### 3. Damage

**Factual causation** – the defendant must have actually caused the dand not some third party, for example. To determine this, the **'but** where it must be satisfied that but for the defendant breaching the damage to the claimant would not have occurred. (*Barnett v Chelse*)

Here, but for the actions of Mr Carr failing to properly secure the some Mrs McGuire would not have occurred. It does not matter about Mrs as under the **thin skull rule** Mr Carr would be liable for the full extends the her.

Legal causation – the resulting age cannot be too remote (The The damage in this age is a period remote in this scenario; it is forescare when a set in greatfolding to ensure that it is properly secured

Mr Carr has caused damage to Mrs McGuire.

#### Conclusion

There was a duty of care owed from Mr Carr to Mrs McGuire; this duty was damages were caused by the breach.

#### You Must Bring In Some Evaluation

Can Mrs McGuire ever be put back in the position she was in previously? people to account as fully trained individuals going too far? Is it unfair to accountable due to Mrs McGuire's sensitive ears?



